United Nations CAT/C/54/D/490/2012

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
25 June 2015

Original: English

Committee against Torture

Communication No. 490/2012

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	E.K.W. (represented by the Refugee Advice Centre)
Alleged victim:	The complainant
State party:	Finland
Date of complaint:	2 February 2012 (initial submission)
Date of decision:	4 May 2015
Subject matter:	Risk of deportation to the Democratic Republic of the Congo
Substantive issues:	Risk of torture upon return to the country of origin
Articles of the Convention:	Articles 3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 490/2012*

Submitted by	E.K.W. (represented by the Refugee Advice Centre)
Alleged victim	The complainant
State party	Finland
Date of complaint	2 February 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 4 May 2015,

Having concluded its consideration of complaint No. 490/2012, submitted to it by E.K.W. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is E.K.W., a national of the Democratic Republic of the Congo, born on 27 April 1976. She claims that her deportation from Finland to the Democratic Republic of the Congo would constitute a violation of article 3 of the Convention. The complainant has a common-law husband and two children, both of them minors, born in Finland. The complainant is represented by counsel.

1.2 On 3 February 2012, in application of rule 114, paragraph 1, of its rules of procedure, the Committee asked the State party not to expel the complainant to the Democratic Republic of the Congo while her complaint was being considered by the Committee. On 9 July 2012, the State party informed the Committee that it had acceded to the request.

Facts as submitted by the complainant

2.1 The complainant was born and resided in Kinshasa. She worked with the non-governmental organization Lisanga Boboto, the aim of which was to support women in the

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

country. She has also been a member of the Mouvement de Libération du Congo (MLC), which at that time was the major opposition party in the Democratic Republic of the Congo. The complainant attended MLC meetings and was active in the party.

2.2 On 12 March 2009, the complainant travelled to Dongo to hold a meeting aimed at mobilizing local women. At the time, the Armée de Libération du Congo (ALC) — the armed section of MLC — and the Armed Forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo — FARDC) were engaged in armed conflict. The meeting was interrupted by FARDC soldiers. The complainant was wearing an MLC T-shirt and an MLC scarf. The soldiers also found an MLC membership card in her bag. The soldiers arrested the complainant and other women who were participating in the meeting. The complainant was imprisoned in their camp, held in a pit, raped and constantly assaulted by the soldiers during the two to three months that she was detained. She managed to escape when the camp was attacked by opposition forces. She found refuge in a local church. The people in the church treated her injuries and helped her to flee the country.

2.3 The complainant travelled to Finland and applied for asylum on 16 February 2010. She presented a medical report, which described the injuries inflicted on her during her detention and the effects of the treatment to which she had been subjected in the military camp.[1] On 28 September 2010, the Finnish Immigration Service decided to deport the complainant, having rejected her application as incoherent and implausible. The Immigration Service found that the injuries listed in the medical certificate presented by the complainant (scars, post-traumatic pain symptoms and mental anxiety), although not inconsistent with the complainant's statements, could have been inflicted in ways other than those described by the complainant. The Immigration Service did not find the complainant to have a political profile that would place her at risk of rights violations upon return to her home country.

2.4 The complainant appealed to the Helsinki Administrative Court, which rejected her appeal on 20 September 2011. The Court stated that neither the Immigration Service nor the Court were able to find any reference to armed clashes between FARDC and ALC in the Dongo region in March 2009. The Court did not find the complainant to have a particular political or social profile and stated that she had not claimed to have been a victim of violations in her home town, Kinshasa. The Court found that, if returned to her country, it was unlikely that the complainant would be of particular interest to the authorities, especially in Kinshasa.

2.5 The complainant submits that, as a result of interpretation problems during her interview, the Immigration Service and, subsequently, the Court assumed that the complainant was not a member of MLC, although in fact she had been an active member of the party since 2002.

[1] According to the medical statement issued by a physician on 2 June 2010, the complainant was very anxious when she arrived in Finland, suffered from headaches, memory problems and sleep disorders and had trouble breathing. She was prescribed antidepressants, anti-anxiety medication and painkillers. At the time of writing the present report, the complainant was found to be in a good general state, calm, clear-headed, if a little melancholic. The complainant's scars were found to be consistent with the way they were caused, as described by her. For example, a scar on the complainant's right buttock was consistent with the result of a stab wound and the small superficial linear wounds were consistent with the after-effects of superficial cuts caused by a bladed weapon. The complainant's symptoms were also consistent with post-traumatic pain symptoms, as was her mental anxiety. The complainant's mental state was found to be slowly improving but regular monitoring was advised.

2.6 On 4 November 2011, the complainant applied for leave to appeal before the Supreme Administrative Court. That Court rejected the application and adopted a final negative decision on 12 December 2011.

2.7 On 3 November 2011, the complainant started to attend meetings at SOS-Crisis Centre, to which she had been referred by the Metsälä reception centre, owing to her anxiety.[2] On 19 January 2012, the complainant had a first visit[3] and on 14 February 2012, a follow-up visit with a psychiatrist.[4]

2.8 On 20 October 2012, the complainant gave birth to her first child.

2.9 In her submission, the complainant refers to the report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo (A/HRC/10/58) and to "2010 Human Rights Report: Democratic Republic of the Congo", of the Department of State of the United States of America, to describe the widespread practice of sexual violence, including rape, against women in the country.

The complaint

3. The complainant claims that her deportation to the Democratic Republic of the Congo would amount to a violation of article 3 of the Convention because she has already been a victim of rape and there are substantial grounds to believe that she would be subjected to torture or other inhuman or degrading treatment if returned there.

State party's observations on admissibility and the merits

4.1 On 9 July 2012, the State party submitted its observations on admissibility and the merits. The Government does not have any preliminary objections as to the admissibility of the communication. As for the merits, it considers that the national authorities have fairly and thoroughly examined the complainant's asylum request and have not been able to establish that returning the complainant to the Democratic Republic of the Congo would put

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[2] According to the report of 28 November 2011 from the SOS-Crisis Centre psychotherapist, the complainant underwent many traumatic experiences before escaping her country: she witnessed the killing of her mother, father and older sister, was forced to flee and was pursued, then later imprisoned and raped repeatedly. Her body is covered in scars from that period. Remembering is visibly exceptionally agonizing for her. The narrative of her flight seems disordered because her traumatic memories of that time are fragmented and her sense of time is blurred. The report also indicated that she has trouble sleeping and suffers from recurrent nightmares and intense mood swings, and has trouble concentrating. When recounting her traumatic experiences for the first time in the Centre, the complainant began to tremble vigorously. Physical injuries to her back and leg inflicted during her incarceration cause her continuous pain. At the time the SOS-Crisis Centre report was produced, the complainant had had five meetings in the Centre, and they were to continue. She was pregnant at the time of the visit and thus was not prescribed medication.

[3] According to the psychiatric report of 20 January 2012, the complainant appeared anxious, indifferent and gloomy, but with no psychotic symptoms or acute signs of a tendency towards self-harm. The complainant was diagnosed with post-traumatic stress disorder and advised to continue attending SOS-Crisis Centre. She was pregnant at the time of the visit and thus was not prescribed medication.

[4] The report of 17 February 2012 specified that the complainant was suffering from constant flashbacks to traumatic experiences in her home country, as well as from fear, anxiety and dissociative symptoms, and was having trouble sleeping. She continued to experience difficulties in dealing with the emotional side of her experiences, which was consistent with untreated traumatic stress disorder. She was diagnosed with post-traumatic stress disorder and depression. She was pregnant at the time of the visit and thus was not prescribed medication.

her at serious risk of being subjected to torture or ill-treatment, in violation of article 3 of the Convention.

4.2 In outlining the facts of the case, the State party described the procedure that the complainant went through at the national level, and national and international law relevant to the decision made by the national authorities. It noted that the complainant's application for asylum was submitted to the police on the day of her arrival to Finland. In her application, the complainant indicated that she had become a political prisoner of FARDC and that, owing to her political profile, FARDC troops would violate her rights again if she returned to the country. The complainant submitted a medical report dated 2 June 2010, according to which her scars, symptoms and anxiety were compatible with her report on the incidents that caused her injuries.

4.3 On 28 September 2010, the Finnish Immigration Service rejected the complainant's request for asylum, refused to issue her with a residence permit and decided to return her to her home country. The Immigration Service based its decision, inter alia, on the fact that it was impossible to establish the author's identity or her travel route to Finland. The Immigration Service also noted that, according to the complainant's own statement, she had not participated in political or religious activities in her home country. She did not report any problems connected to her work with Lisanga Boboto. Regarding the medical report of 2 June 2010, the Immigration Service noted that although the author's injuries are not inconsistent with her statement, they could have been caused in a different manner. Therefore, the injuries do not substantiate the account of the facts that led to her seeking asylum. The Immigration Service found that, according to the complainant's own statement, she did not have a political profile that would result in a risk of her rights being violated if she returned to her home country. The Immigration Service did not establish any other grounds on which the complainant could be at risk of persecution in her home country in terms of refugee protection. It also found the complainant not to be in need of humanitarian protection because of the security situation in her country, as no acute security risk existed in Kinshasa, her place of residence.

4.4 The complainant appealed the decision of the Immigration Service before the Administrative Court. In its submission of 21 February 2011 to the Administrative Court, the Immigration Service stated that because the complainant's entire account of the incidents in Dongo was not credible, it could not be presumed that the soldiers were aware of her political opinion or that she was arrested and assaulted on political grounds. On 20 September 2011, the Administrative Court rejected the complainant's appeal. In its reasoning, the Administrative Court described the complainant's statement and information about her country. The Court held that the credibility of the complainant's statement was undermined by the fact that, when examining the available country reports, neither the Court nor the Immigration Service found any indication of armed conflict between FARDC and ALC in the Dongo region in March 2009. The author has not reported any violations of her rights because of her activities in Lisanga Boboto. She stated that she was only a supporter, not a member, of MLC and had received her MLC membership card when travelling to Dongo. The MLC T-shirt and MLC scarf were distributed to the public and she wore them without any political motivation. The Court did not find that the complainant was in need of asylum, humanitarian protection or protection on compassionate grounds, that the Congolese authorities would be particularly interested in her because of her political profile or that the situation in her country was so unsafe as to make her return impossible.

4.5 On 12 December 2011, the Supreme Administrative Court refused the complainant's request for leave to appeal.

4.6 Regarding the evidence of the complainant's health submitted to the Committee, the State party submits that only one medical report, that of 2 June 2010, had been previously

submitted to the Immigration Service. The complainant could have presented the report of the psychotherapist of 28 November 2011 to the Supreme Administrative Court, as it was produced before the leave to appeal was refused, but she failed to do so.

4.7 Regarding the complainant's allegations about interpretation problems during the proceedings before the Immigration Service and the Administrative Court, the State party argues that this allegation lacks credibility on the following grounds. The complainant wrote her request for asylum herself in Lingala and indicated Lingala as her language. During the interrogation arranged by the police on 14 March 2010, she reported that her mother tongue was Kintandu and that she also spoke Lingala and some French. As mentioned in the record of the Immigration Service interview, which was in Lingala, the complainant confirmed that she understood what the interpreter was saying. The author was explicitly requested to tell the interviewer if she did not understand the questions posed to her. The record of an interview in the Immigration Service of 7 July 2010 indicates that the complainant was asked detailed questions about her contacts with MLC and activities in the party. The complainant answered that she was not a member of MLC, that she only attended a party meeting as a silent supporter, that she was given a membership card only when travelling to Dongo and that she was wearing MLC clothes, which were distributed to people, without any political motive. The Government notes that the complainant did not mention any problems caused by interpretation in her appeals to the Administrative Court and the Supreme Administrative Court.

Complainant's comments on the State party's observations

5.1 With regard to the State party's statement that the complainant had submitted only one medical report to the Immigration authorities, on 9 September 2012 the complainant submitted that the medical report of 2 June 2010 recorded her physical injuries and emphasized the need for her mental health to be regularly monitored. Additionally, the complainant noted that, at the interview with the Finnish Immigration Service on 7 July 2010 she had told the authorities about the serious harm and torture she had suffered when captured by the soldiers. In particular, the complainant mentioned that she was imprisoned in a pit in the ground and raped repeatedly. The complainant referred to European Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, and the case law of the European Court of Human Rights[5] in claiming that the burden of proof shifts from the complainant to the State when the complainant has already suffered serious harm or torture prior to flight. Taking into account the fact that the claimant recounted her experience of torture to the authorities and supported her story with a medical statement, the burden of proof has shifted to the Finnish authorities.

5.2 The complainant also stated that she experienced significant difficulties in obtaining a referral to a specialized doctor. During the proceedings at the Immigration Service, she complained to a nurse about the pain and weakness she was experiencing, but was not referred to a psychiatrist. The Immigration Service did not consider it necessary for her to consult a gynaecologist. The complainant was referred to a psychologist only after moving to another reception centre in November 2011. Her legal counsel tried to obtain an appointment for her with a psychiatrist, but as the nurse responsible for the complainant did not think it necessary, the reception centre concluded it would not pay for the consultation.

[5] See, in particular, European Court of Human Rights, *case of R.C. v. Sweden*, judgement of 9 March 2010 (application No. 41827/07).

As a result, the complainant's referral to a psychiatrist and to the Centre for Torture Survivors has been delayed, despite her efforts.[6]

5.3 As for the State party's observation on the security situation in the Democratic Republic of the Congo, the complainant submitted that the State party failed to present any supporting information in that regard. The complainant referred to the Committee's findings in the case of *Njamba and Balikosa v. Sweden*,[7] in which it concluded that it was impossible to identify particular areas in the Democratic Republic of the Congo that could be considered safe for the complainants.

5.4 Regarding the alleged contradictions concerning her political participation in MLC and her allegations about the interpretation problems, the complainant emphasized that she is a traumatized person and has been diagnosed with post-traumatic stress disorder. The author refers to the Committee's jurisprudence, in which it has considered that complete accuracy is seldom to be expected from victims of torture.[8]

5.5 The complainant referred to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, and provided information to support the claim that she would be in danger of being subjected to torture were she to be expelled. According to the criteria listed in paragraph 8 of the general comment, the complainant submitted that in the Democratic Republic of the Congo there are serious human rights violations; that no area could be considered safe for her, as a woman who is a traumatized victim of torture; that she has been imprisoned, continuously mistreated and tortured by FARDC soldiers; that she presented medical evidence supporting her claim of the mental and physical damage she had suffered; that she worked with the non-governmental organization Lisanga Boboto, which cooperates with a bigger non-governmental organization, La voix des sans-voix pour les droits de l'homme; and that she was a member of MLC, the second-largest opposition party in the Democratic Republic of the Congo, attending party meetings and being active in the party.

Additional submission from the complainant

6. On 2 July 2014, the complainant submitted to the Committee reports by three medical specialists of the Centre for Torture Survivors: one by a psychiatric specialist dated 29 August 2013, one by a physical therapist dated 17 April 2013 and a medical case summary by a specialist in neurology psychotherapist dated 7 March 2013. The reports indicate that the complainant suffers from symptoms of major depressive disorder. According to the reports, the findings are concurrent with the torture methods described by the complainant and she is in need of long-term physical and psychological treatment. The complainant stated that these and previous medical reports clearly support her claims that she has been victimized through rape and other forms of torture and ill-treatment in the Democratic Republic of the Congo. According to the complainant, taking into account the situation in her country of origin, there are substantial grounds for believing that she would face a foreseeable, real and personal risk of being subjected to torture if returned to the

[6] The complainant presented a medical report of 9 July 2012 from a general practitioner. The report describes the complainant's physical ailments, stating that she is experiencing clear sciatic symptoms on her right side, which has led to a mild palsy in her right leg. It notes that the complainant had appointments at SOS-Crisis Centre before her pregnancy but not after the baby was born. The report emphasizes that a visit, for example to the Centre for Torture Survivors, would be particularly beneficial to the complainant.

[7] See communication No. 322/2007, *Evelme Njamba and her daughter Kathy Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.5. See also communication No. 379/2009, *Sylvie Bakatu-Bia v. Sweden*, decision adopted on 3 June 2011, para. 10.7.

[8] Communication No. 43/1996, *Tala v. Sweden*, Views adopted on 15 November 1996, para. 10.3.

Democratic Republic of the Congo. The complainant also informed the Committee that she had given birth to her second child on 3 October 2013.

Additional submission from the State party

7. On 20 January 2015, the State party informed the Committee that despite the new medical certificates submitted to the Committee by the complainant, which were not submitted to the State party authorities, the facts presented by the complainant to the Committee did not reveal a breach of article 3 of the Convention should she be deported to the Democratic Republic of the Congo. The State party maintained that the complainant's asylum request had been fairly and thoroughly examined by the national authorities, and it had not been established that she would face a serious risk of torture or ill-treatment upon return.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

9.2 The issue before the Committee is whether the expulsion of the complainant to the Democratic Republic of the Congo would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Democratic Republic of the Congo. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does

not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee recalls its general comment No. 1 (1997), in which it is stated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable (para. 6), but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that, under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time, it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, to carry out a free assessment of the facts based upon the full set of circumstances in every case. The Committee further recalls that under general comment No. 1 (para. 5), the burden to present an arguable case is on the author of a communication.

9.5 The Committee notes the complainant's claim that she was arrested by FARDC soldiers while holding a seminar for women in Dongo in 2009 and that she was mistreated and tortured, including by being raped repeatedly, by the soldiers. The Committee notes the submission of the State party that the State authorities have received only one medical report, dated 2 June 2010, which they did not consider sufficient proof of torture. The Committee, however, notes that the report establishes that the scars on the complainant's body and the psychiatric symptoms exhibited by her are consistent with the complainant's account of torture. The Committee concludes that the complainant has provided sufficient evidence that she had been subjected to torture in the past.

9.6 The Committee also notes that the complainant alleges that she was subjected to rape and other torture by members of FARDC, who are the official military forces of the State party and are present and active in its entire territory, and that she claims to have escaped from detention by FARDC. The Committee notes the State party's submission regarding the credibility of the complainant's account of her political activities and membership of an opposition party and regarding the circumstances of her escape and flight from the country. The Committee, however, recalls that complete accuracy is seldom to be expected from victims of torture and that the inconsistencies in the complainant's presentation of the facts do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she suffers from post-traumatic stress disorder.[9] The Committee also notes that the complainant was arrested while dressed as a supporter of an opposition party and in possession of a membership card, and observes that that was sufficient to create the perception that she was a member and activist of that party.

9.7 The Committee notes the complainant's argument that violence against women in the Democratic Republic of the Congo is widespread. In this regard, the Committee recalls its previous jurisprudence and its views in the case of *Njamba and Balikosa v. Sweden*,[10] in which the Committee was not able to identify any particular area in the Democratic Republic of the Congo that could be considered safe for the complainants. The Committee observes that in recent credible reports, namely the 2013 report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo (A/HRC/24/33) and the concluding observations of the Committee on the Elimination of Discrimination against Women on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo (CEDAW/C/COD/CO/6-7), it is stated that the widespread violence against women, including rape by national armed groups, security and defence forces, is mostly inherent in

[9] See also *Tala v. Sweden* (note 8 above), para. 10.3.

[10] Communication No. 322/2007, decision adopted on 14 May 2014, para. 9.5.

conflict-affected and rural areas of the country, especially in the east. The Committee is concerned, however, that according to these reports such violence is also taking place in other parts of the country.

9.8 Accordingly, the Committee finds that, taking into account all the factors in this particular case, substantial grounds exist for believing that the complainant will be in danger of torture if returned to the Democratic Republic of the Congo.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to the Democratic Republic of the Congo by the State party would constitute a breach of article 3 of the Convention.

11. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the present decision.